



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
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May 20, 2015

Mr. Kelly Scott Thomas-Bey  
44 90 West Reformatory Road  
Pendleton, IN 46064

*Re: Formal Complaint 15-FC-160; Alleged Violation of the Access to Public Records Act by the Indiana Election Division, Trent Deckard*

Dear Mr. Thomas-Bey,

This advisory opinion is in response to your formal complaint alleging the Indiana Election Division ("Division") and Trent Deckard violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Division has responded to your complaint via Trent Deckard, Co-Director. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 13, 2015.

## **BACKGROUND**

On November 19, 2014 you submitted your original records request, seeking the Oaths of Office for six (6) Indiana officials, listed below.

1. Terry C. Shewmaker, Administrative Judge
2. Stephanie Burgess, Former Elkhart County Clerk
3. Wendy Hudson, Elkhart County Clerk
4. Curtis T. Hill Jr., Elkhart County Prosecuting Attorney
5. Judge L. Benjamin Pfaff, Elkhart County Superior Court
6. Judge Evan Roberts, Elkhart County Superior Court

However, you sent this request to the Secretary of State. This request was forwarded to the Election Division.

On January 8, 2015 you received oaths for Curtis Hill and Judge Roberts. In addition, you were told Judge Pfaff's oath could not be located. You did not receive an answer about the remaining documents.



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On March 31, 2015, you submitted an amended complaint, seeking the oaths from the officials listed.

1. Terry C. Shewmaker, Administrative Judge
2. Stephanie Burgess, Former Elkhart County Clerk
3. Wendy Hudson, Elkhart County Clerk
4. Vicki Becker, Elkhart County Chief Deputy Prosecutor
5. William Wargo Jr., Detective, Elkhart City Police Department
6. Mike Pence, Governor
7. Greg Zoeller, Indiana Attorney General
8. Don E. Pitzer II, Elkhart County Deputy Prosecuting Attorney

On May 18, 2015, Mr. Deckard responded to your complaint. He notes the state does not maintain oaths for County Clerks, Prosecuting Attorneys or City Police personnel. He has included the oaths which were found in the state records.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Indiana Election Division is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Division's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

The APRA does not require a state agency to provide records it does not possess. If the Election Division does not possess oaths for certain personnel, then those oaths do not have to be provided. I would respectfully request the Division to be mindful that pursuant to Ind. Code § 5-14-3-9(d) the Division would still be required to inform you that those oaths do not exist in writing.

Regards,



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A handwritten signature in black ink, appearing to read "LH Britt", is written over a horizontal line.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Trent Deckard